

## § 3560.160

purposes of occupancy termination by a borrower, includes actions such as:

(i) Violations of lease provisions or occupancy rules that are substantial and/or repeated;

(ii) Non-payment or repeated late payment of rent or other financial obligations due under the lease or occupancy rules; or

(iii) Admission to or conviction for use, attempted use, possession, manufacture, selling, or distribution of an illegal controlled substance when such activity occurred on the housing project's premises by the tenant, a member of the tenant's household, a guest of the tenant, or any other person under the tenant's control at the time of the activity.

(2) Good causes, for purposes of occupancy terminations by a borrower, include actions such as:

(i) Actions by the tenant or a member of the tenant's household which disrupt the livability of the housing by threatening the health and safety of other persons or the right of other persons to enjoyment of the premises and related facilities;

(ii) Actions by the tenant or a member of the tenant's household which result in substantial physical damage causing an adverse financial effect on the housing or the property of other persons; or

(iii) Actions prohibited by state and local laws.

(b) *Lease expiration or tenant eligibility.* A tenant's occupancy in an Agency-financed housing project may not be terminated by a borrower when the lease agreement expires unless the tenant's actions meet the conditions described in paragraph (a) of this section, or the tenant is no longer eligible for occupancy in the housing. Borrowers must handle terminations of occupancy due to a change in tenant eligibility status in accordance with § 3560.158. At a minimum, the occupancy termination notice must include the following information:

(1) A specific date by which lease termination will occur;

(2) A statement of the basis for lease termination with specific reference to the provisions of the lease or occupancy rules that, in the borrower's judgment, have been violated by the

## 7 CFR Ch. XXXV (1-1-05 Edition)

tenant in a manner constituting material non-compliance or good cause; and

(3) A statement explaining the conditions under which the borrower may initiate judicial action to enforce the lease termination notice.

(c) *Other terminations.* If occupancy is terminated due to conditions which are beyond the control of the tenant, such as a condition related to required repair or rehabilitation of the building, or a natural disaster, the tenants who are affected by such a circumstance are entitled to benefits under the Uniform Relocation Act and may request a Letter of Priority Entitlement (LOPE) from the Agency. If tenants need additional time to secure replacement housing, the Agency may, at the tenant's request, extend the LOPE entitlement period.

(d) *Criminal activity.* Borrowers may terminate tenancy for criminal activity or alcohol abuse by household members in accordance with the provisions of 24 CFR 5.858, 5.859, 5.860, and 5.861.

### § 3560.160 Tenant grievances.

(a) *General.* (1) The requirements established in this section are designed to ensure that there is a fair and equitable process for addressing tenant or prospective tenant concerns and to ensure fair treatment of tenants in the event that an action or inaction by a borrower, including anyone designated to act for a borrower, adversely affects the tenants of a housing project.

(2) Any tenant/member or prospective tenant/member seeking occupancy in or use of Agency facilities who believes he or she is being discriminated against because of age, race, color, religion, sex, familial status, disability, or national origin may file a complaint in person with, or by mail to the U.S. Department of Agriculture's Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW., Washington DC 20250-9410 or to the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD), Washington, DC 20410. Complaints received by Agency employees must be directed to the National Office Civil Rights Staff through the State Civil Rights Manager/Coordinator.

(b) *Applicability.* (1) The requirements of this section apply to a borrower action regarding housing project operations, or the failure to act, that adversely affects tenants or prospective tenants.

(2) This section does not apply to the following situations:

(i) Rent changes authorized by the Agency in accordance with the requirements of § 3560.203(a);

(ii) Complaints involving discrimination which must be handled in accordance with § 3560.2(b) and paragraph (a)(2) of this section;

(iii) Housing projects where an association of all tenants has been duly formed and the association and the borrower have agreed to an alternative method of settling grievances;

(iv) Changes required by the Agency in occupancy rules or other operational or management practices in which proper notice and opportunity have been given according to law and the provisions of the lease;

(v) Lease violations by the tenant that would result in the termination of tenancy and eviction;

(vi) Disputes between tenants not involving the borrower; and

(vii) Displacement or other adverse actions against tenant as a result of loan prepayment handled according to subpart N of this part.

(c) *Borrower responsibilities.* Borrowers must permanently post tenant grievance procedures that meet the requirements of this section in a conspicuous place at the housing project. Borrowers also must maintain copies of the tenant grievance procedure at the housing project's management office for inspection by the tenants and the Agency upon request. Each tenant must receive an Agency summary of tenant's rights when a lease agreement is signed. If a housing project is located in an area with a concentration of non-English speaking individuals, the borrower must provide grievance procedures in both English and the non-English language. The notice must include the telephone number and address of USDA's Office of Civil Rights and the appropriate Regional Fair Housing and Enforcement Agency.

(d) *Reasons for grievance.* Tenants or prospective tenants may file a grievance

in writing with the borrower in response to a borrower action, or failure to act, in accordance with the lease or Agency regulations that results in a denial, significant reduction, or termination of benefits or when a tenant or prospective tenant contests a borrower's notice of proposed adverse action as provided in paragraph (e) of this section. Acceptable reasons for filing a grievance may include:

(1) Failure to maintain the premises in such a manner that provides decent, safe, sanitary, and affordable housing in accordance with § 3560.103 and applicable state and local laws;

(2) Borrower violation of lease provisions or occupancy rules;

(3) Modification of the lease;

(4) Occupancy rule changes;

(5) Rent changes not authorized by the Agency according to § 3560.205; or

(6) Denial of approval for occupancy.

(e) *Notice of adverse action.* In the case of a proposed action that may have adverse consequences for tenants or prospective tenants such as denial of admission to occupancy and changes in the occupancy rules or lease, the borrower must notify the tenant or prospective tenant in writing. In the case of a Borrower's proposed adverse action including denial of admission to occupancy, the Borrower shall notify the applicant/tenant in writing. The notice must be delivered by certified mail return receipt requested, or a hand-delivered letter with a signed and dated acknowledgement of receipt from the applicant/tenant. The notice must give specific reasons for the proposed action. The notice must also advise the tenant or prospective tenant of "the right to respond to the notice within ten calendar days after date of the notice" and of "the right to a hearing in accordance with § 3560.160 (f), which is available upon request." The notice must contain the information specified in paragraph (a)(2) of this section. For housing projects in areas with a concentration of non-English speaking individuals, the notice must be in English and the non-English language.

(f) *Grievances and responses to notice of adverse action.* The following procedures must be followed by tenants, prospective tenants, or borrowers involved

in a grievance or a response to an adverse action.

(1) The tenant or prospective tenant must communicate to the borrower in writing any grievance or response to a notice within 10 calendar days after occurrence of the adverse action or receipt of a notice of intent to take an adverse action.

(2) Borrowers must offer to meet with tenants to discuss the grievance within 10 calendar days of receiving the grievance. The Agency encourages borrowers and tenants or prospective tenants to make an effort to reach a mutually satisfactory resolution to the grievance at the meeting.

(3) If the grievance is not resolved during an informal meeting to the tenant or prospective tenant's satisfaction, the borrower must prepare a summary of the problem and submit the summary to the tenant or prospective tenant and the Agency within 10 calendar days. The summary should include: The borrower's position; the applicant/tenant's position; and the result of the meeting. The tenant also may submit a summary of the problem to the Agency.

(g) *Hearing process.* The following procedures apply to a hearing process.

(1) *Request for hearing.* If the tenant or prospective tenant desires a hearing, a written request for a hearing must be submitted to the borrower within 10 calendar days after the receipt of the summary of any informal meeting.

(2) *Selection of hearing officer or hearing panel.* In order to properly evaluate grievances and appeals, the borrower and tenant must select a hearing officer or hearing panel. If the borrower and the tenant cannot agree on a hearing officer, then they must each appoint a member to a hearing panel and the members selected must appoint a third member. If within 30 days from the date of the request for a hearing, the tenant and borrower have not agreed upon the selection of a hearing officer or hearing panel, the borrower must notify the Agency by mail of the situation. The Agency will appoint a person to serve as the sole hearing officer. The Agency may not appoint a hearing officer who was earlier considered by either the borrower or the ten-

ant, in the interest of ensuring the integrity of the process.

(3) *Standing hearing panel.* In lieu of the procedure contained in paragraph (g)(2) of this section for each grievance or appeal presented, a borrower may ask the Agency to approve a standing hearing panel for the housing project.

(4) *Examination of records.* The borrower must allow the tenant the opportunity, at a reasonable time before a hearing and at the expense of the tenant, to examine or copy all documents, records, and policies of the borrower that the borrower intends to use at a hearing unless otherwise prohibited by law or confidentiality agreements.

(5) *Scheduling of hearing.* If a standing hearing panel has been approved, a hearing will be scheduled within 15 calendar days after receipt of the tenant's or prospective tenant's request for a hearing. If a hearing officer or hearing panel must be selected, a hearing will be scheduled within 15 calendar days after the selection or appointment of a hearing panel or a hearing officer. All hearings will be held at a time and place mutually convenient to both parties. If the parties cannot agree on a meeting place or time, the hearing officer or hearing panel will designate the place and time.

(6) *Escrow deposits.* If a grievance involves a rent increase not authorized by the Agency, or a situation where a borrower fails to maintain the property in a decent, safe, and sanitary manner, rental payments may be deposited by the tenant into an escrow account, provided the tenant's rental payments are otherwise current.

(i) The escrow account deposits must continue until the complaint is resolved through informal discussion or by the hearing officer or panel.

(ii) The escrow account must be in a Federally-insured institution or with a bonded independent agent.

(iii) Failure to make timely rent payments into the escrow account will result in a termination of the tenant grievance and appeals procedure and all sums will immediately become due and payable under the lease.

(iv) Receipts of escrow account deposits must be available for examination by the borrower.

(7) *Failure to request a hearing.* If the tenant or prospective tenant does not request a hearing within the time provided by paragraph (f)(1) of this section, the borrower's disposition of the grievance or appeal will become final.

(h) *Requirements governing the hearing.* The following requirements will govern the hearing process.

(1) Subject to paragraph (f)(2) of this section, the hearing will proceed before a hearing officer or hearing panel at which evidence may be received without regard to whether that evidence could be used in judicial proceedings.

(2) The hearing must be structured so as to provide basic due process safeguards for both the borrower and the tenants or prospective tenants, which must protect:

(i) The right of both parties to be represented by counsel or another person chosen as their representative;

(ii) The right of the tenant or prospective tenant to a private hearing unless a public hearing is requested;

(iii) The right of the tenant or prospective tenant to present oral or written evidence and arguments in support of their grievance or appeal and to cross-examine and refute the evidence of all witnesses on whose testimony or information the borrower relies; and

(iv) The right of the borrower to present oral and written evidence and arguments in support of the decision, to refute evidence relied upon by the tenant or prospective tenant, and to confront and cross-examine all witnesses in whose testimony or information the tenant or prospective tenant relies.

(3) At the hearing, the tenant or prospective tenant must present evidence that they are entitled to the relief sought, and the borrower must present evidence showing the basis for action or failure to act against that which the grievance or appeal is directed.

(4) The hearing officer or hearing panel must require that the borrower, the tenant or prospective tenant, counsel, and other participants or spectators conduct themselves in an orderly manner. Failure to comply may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and

granting or denial of the relief sought, as appropriate.

(5) If either party or their representative fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for no more than five days or may make a determination that the absent party has waived their right to a hearing under this subpart. If the determination is made that the absent party has waived their rights, the hearing officer or hearing panel will make a decision on the grievance. Both the tenant or prospective tenant and the borrower must be notified in writing of the determination of the hearing officer or hearing panel.

(i) *Decision.* Hearing decisions must be issued in accordance with the following requirements.

(1) The hearing officer or hearing panel has the authority to affirm or reverse a borrower's decision.

(2) The hearing officer or hearing panel must prepare a written decision, together with the reasons thereof based solely and exclusively upon the facts presented at the hearing within 10 calendar days after the hearing. The notice must state that the decision is not effective for 10 calendar days to allow time for an Agency review as specified in paragraphs (i)(3) and (i)(4) of this section.

(3) The hearing officer or hearing panel must send a copy of the decision to the tenant, or prospective tenant, borrower, and the Agency.

(4) The decision of the hearing officer or hearing panel shall be binding upon the parties to the hearing unless the parties to the hearing are notified within 10 calendar days by the Agency that the decision is not in compliance with Agency regulations.

(5) Upon receipt of written notification from the hearing officer or hearing panel, the borrower and tenant must take the necessary action, or refrain from any actions, specified in the decision.

§§ 3560.161–3560.199 [Reserved]

§ 3560.200 OMB control number.

The information collection requirements contained in this regulation have been approved by the Office of